

## **TITLE 327 WATER POLLUTION CONTROL BOARD**

### **#01-96(WPCB)**

#### **SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD**

The Indiana Department of Environmental Management (IDEM) requested public comment from January 1, 2002, through January 31, 2002, on IDEM's draft rule language. IDEM received comments from the following parties:

Following is a summary of the comments received and IDEM's responses thereto. The summarized comments are being divided into categories so as to focus on issues.

American Consulting, Inc. (ACI)  
Area Plan Commission Evansville-Vanderburgh County (APC)  
City of Elkhart (COE)  
City of Evansville (CE)  
City of Fort Wayne (COFW)  
City of Kendallville (COK)  
City of Valparaiso (COV)  
Commonwealth Engineers, Inc. (CEI)  
Hamilton County Surveyor's Office (HC)  
Hancock County Board of Commissioners (HBC)  
Indiana Association of Cities and Towns (IACT)  
Indiana Department of Natural Resources (DNR)  
Indiana Department of Transportation (INDOT)  
Indiana Manufacturers Association (IMA)  
Monroe County Highway Department (MCHD)  
Purdue University (PU)  
Sanitary District of Michigan City (SDMC)  
Saves the Dunes Council (STDC)  
Town of Brownsburg (TOB)  
University MS4 Workgroup (UW)  
Vanderburgh County Board of Commissioners (VBC)  
Vanderburgh County Engineering Department (VCED)  
Warrick County (WC)

#### **327 IAC 5-4-6 Comments**

*Comment:* In subsections (a)(2), (a)(3), (a)(5), (a)(6), and (e), the applicability of this rule to

regulated municipal separate storm sewer system (MS4) entities under 327 IAC 15-13 is unclear. Apparent confusion exists over the MS4 operator's authority in regulating industrial facilities, land disturbing activities outside of urbanized areas, and administering individual NPDES permits for industrial facilities. Since there is no definition in this rule, the definition of United States Census Bureau urbanized area map, in relation to a density stipulation of one thousand (1,000) or five hundred (500), is unclear. (MCHD)

*Response:* This rule sets the authority for IDEM to issue individual NPDES permits for regulating storm water discharges. The rule is not intended to be applicable to MS4 operators regulated under 327 IAC 15-13. As for defining urbanized area, subsection (j) of the rule references 327 IAC 15-13 for the meaning of the term.

*Comment:* In subsection (a)(8), discharges associated with departments of transportation (DOTs) and county highway departments are subject to the NPDES program. The regulation is confusing as to county roads being regulated outside of urbanized areas. If the same requirements as 327 IAC 15-13 are applicable to Indiana DOT conveyances on a statewide basis, the cost incurred for compliance would be burdensome. If IDEM considers roadside drainage ditches to be waters of the state, Indiana DOT is requesting that points where storm water run-off enters a waterbody from these ditches be identified as the outfall for purposes of assessment and illicit detection. (MCHD, INDOT)

*Response:* Subsection (a)(8) was revised to clarify designation of county highway department MS4 conveyances and operational areas only within urbanized areas. Indiana DOT will not be regulated by 327 IAC 15-13, and the specific requirements, including the identification of outfall points, will be developed during the negotiations for writing an individual NPDES permit under this referenced subsection.

*Comment:* In subsection (g), the reference to 327 IAC 2-1-6(a)(1) should be expanded to include a reference to 327 IAC 2-1.5-8 for discharges to Indiana's Great Lakes Basin waters. Immediate compliance with this referenced requirement is unrealistic, and some time period should be allowed to reach compliance. It is unclear if this reference imposes water quality-based effluent limitations (WQBELs) pursuant to 327 IAC 5-2-11.1 or 5-2-11.3 through 11.6 or some other permit condition. If WQBELs are not the intended reference, the rule language does not contain any ascertainable standards for imposed conditions, is mandatory and likely inconsistent with existing rule language, and should reference WQBELs in place of inadequate technology-based effluent limitations. Based on interpretation of Article 5, it is felt that standards should not apply until they are translated into effluent limitations. (STDC, IMA, ACI)

*Response:* Subsection (g) was revised to include reference to 327 IAC 2-1.5-8. The narrative water quality standards are applicable to all NPDES-permitted discharges, and numeric effluent limitations are not necessary to have these standards become effective. Due to the high variability of pollutant concentrations in storm water discharges, setting numeric effluent limitations for all regulated MS4 areas is difficult, and not appropriate at this time. If warranted in specific instances, individual NPDES storm water permits could be issued with numeric effluent limitations.

*Comment:* In subsection (h), discharges of storm water run-off combined with municipal sewage are not subject to this section. Under Phase I federal storm water requirements, there was an allowance for municipalities that have a significant percentage of their total storm water conveyance system classified as combined to “drop out” of the storm water permitting requirements. Only the population served by the separated portion of the total conveyance system should be used in the threshold calculations for designation. This rule and the designation requirements in 327 IAC 15-13-3 should be revised to reflect the percentage of combined sewer system allowance. (IACT)

*Response:* Subsection (h) addresses combined sewer systems (CSS) that should be regulated under the wastewater NPDES permitting program. CSS are not regulated by 327 IAC 5-4-6 or 327 IAC 15-13. However, for designation purposes in 327 IAC 15-13-3, the CSS percentage petition allowed in 40 CFR 122.26(f)(3) was deemed inappropriate for Indiana. The petition allowance is based, in part, on CSS municipalities having to implement nine (9) minimum control measures, which are similar to storm water measures, for their wastewater NPDES permit. However, two (2) of the storm water measures, control of construction site and post construction run-off, are not covered by the nine measures. Because of the difference, it was felt that CSS requirements were insufficient to adequately address all of the storm water program requirements.

### **327 IAC 15-13 Comments**

#### **General Comments**

*Comment:* The public comment period should be extended, and examples should be provided on ways regulated MS4 entities can meet the compliance schedule deadlines, while developing intra-jurisdictional agreements. (TOB)

*Response:* The second public comment period ended on January 31, 2002. The public has opportunities to provide public comments during the hearings for preliminary and final adoption to the Water Pollution Control Board. In 2001, IDEM began notifying and informing potentially regulated MS4 entities of the rule requirements and the need to initiate discussions to develop intra-jurisdictional agreements. On a local level, each MS4 entity should know the necessary processes and timetables to developing an appropriate agreement, and must implement the agreement based on those local conditions to meet the March 2003 deadline.

*Comment:* The Rule 13 program promises verifiable improvement in water quality from municipal separate storm sewers. However, it is unclear the amount of direct assistance (if any), and oversight IDEM or Indiana department of natural resources will provide based on the apparent state inadequacy of resources. (STDC)

*Response:* The desired outcome of this program is to improve the quality of municipal storm water discharges. Similar to all NPDES permits, IDEM will require permitting fees for the storm water

program. Collected fees will, in part, be used to adequately staff the program.

*Comment:* The new rule seems to be more of an oppression than a positive factor for cities and utilities. Cities are not aware of any environmental disasters due to storm water contamination that would warrant such sweeping and costly change. As an example of this cost, combined sewer system communities have spent monies to separate their systems to prevent noncompliance, only to have additional funding needs arise when storm water requirements take effect. Industries and builders/developers are also burdened by the new requirements. Existing storm water requirements are already known to the regulated community and generally complied with, and do not need added stipulations. (COK)

*Response:* Phase II of the federal storm water regulations, which affects municipalities, industries and builders/developers, was mandated by the United States Environmental Protection Agency. Revisions to Indiana's existing rules are necessary to comply with the mandated changes, and a new rule to regulate municipalities was required. According to the December 1999 NPDES Final Rule covering 40 CFR Parts 9, 122, 123, and 124 in the Federal Register, and the 1996 National Water Quality Inventory Report to Congress, storm water pollution has been documented as a significant cause of impact to various types of waters in the United States. Combining the mandate with the documented impact from storm water run-off, Indiana's storm water program is attempting to achieve federal compliance and improve overall water quality in the state.

*Comment:* County government has enough of a negative image without unnecessarily adding to it. There appears to be a disconnect between the people who are writing the rules and the people who will have to enforce them. The people writing the rules should be the same ones to face the public when they raise concerns or opposition. It is not good when programs, based on a good idea, are forced on the regulated community when the requirements are not agreed upon. There are financial issues (for example, cutbacks, recession, tax reassessment, ongoing war) throughout the country, and, if imposed measures require questionable expenses, there will be a backlash against storm water quality programs that will have long-term consequences. Rule 13 seems to say that municipalities should spend money to improve storm water quality, but the improvement expenditures are indefinite. Since the rule does not address all existing land uses, there is no ultimate water quality goal. Storm water quality is an important issue, but so are other issues that require resources. The rule should be implemented, but without the "bells and whistles." The relationship between IDEM and MS4 operators should be a partnership, and not a dictatorship. (MCHD)

*Response:* Rule 13 was developed by an external workgroup, comprised of many regulated entities, who reached a consensus regarding the draft rule language. The rule version published in the January 2002 Indiana Register was the output of this workgroup effort. The Indiana Register version, and the subsequent revised version based on public comments, reflect input and concerns of the public. One of the end results of this public input has been to write a flexible goal-oriented storm water program that requires programmatic indicators in place of mandatory biological or chemical water

quality monitoring.

*Comment:* Standard state-wide water quality requirements need to be reviewed and changed. The triennial review of water quality standards is late, and there has been no justification for this delay. (HC)

*Response:* Triennial review may address the requirements of 327 IAC 2-1-6(a)(1) and 327 IAC 2-1.5-8 pertaining to all NPDES-permitted discharges. However, the timetable for this review is not under consideration as part of this rulemaking.

*Comment:* The rule should add clear language to describe the differences between a general permit and an individual permit. (IACT)

*Response:* 327 IAC 15-13 establishes the requirements for a general MS4 permit. 327 IAC 5-4-6 provides the authority for IDEM to issue an individual MS4 permit. Unlike the “general” conditions required by Rule 13, individual MS4 permits will be written, with input from the permittee, to reflect the specific conditions of a permittee’s MS4 area. As such, it is not feasible to describe the differences until an individual permit is actually written.

*Comment:* Many of the IDEM requirements far exceed federal requirements. This adherence to stronger, stricter regulations is overly burdensome, and without justification. Any requirements that are more stringent than federal regulations should be reconsidered, and possibly added at a later date to allow time for regulated entities to develop an appropriately funded and staffed program first. Also, prior to placing more stringent and costly regulations on citizens and government agencies, a review of the effectiveness of Phase I storm water regulations should be conducted. (WC, TOB)

*Response:* Indiana’s version of the Phase II MS4 rule, seeks to clarify ambiguities with the federal requirement. The external Rule 13 development workgroup reached consensus that the rule should detail specific requirements, where possible, to maintain consistency for compliance and to portray state expectations for an adequate program. Many of the regulation requirements have been suggested, to remove some of the subjectivity of the federal rule and to add specific requirements deemed important for Indiana by the external workgroup.

*Comment:* It is confusing that IDEM is willing to force a costly program into effect that will likely make a small difference in water quality, while storm water discharges from rural areas remain unregulated. There should be some regulatory consideration of other sources of storm water quality impact, such as nonpoint sources in rural areas. (TOB)

*Response:* Included in the December 1999 NPDES final rule covering 40 CFR Parts 9, 122, 123, and 124 in the federal register, the U.S. EPA justified the regulation of urbanized areas. In that document, storm water run-off from urbanized areas was documented as a significant contributor of

pollutants to waters of the United States. IDEM's proposed rule is addressing the same urbanized areas as those in the federal regulations. The omission of rural areas from storm water requirements is consistent with federal language.

*Comment:* In relation to local associations and state-maintained roadways, MS4 entity responsibilities under the rule are unclear. The rule needs to clarify which entities are covered by the rule within a given designated MS4 area. (TOB)

*Response:* MS4 entities are only responsible for areas in which they have jurisdiction, unless an agreement between affected parties is created to legally allow the jurisdictional area to be extended. The Indiana department of transportation will have an individual MS4 permit covering their jurisdictional conveyances, and home owner association MS4 conveyances may be covered by a regulated MS4 entity with the appropriate agreement, or, if the discharge is impacting a regulated MS4 conveyance without an agreement, can be permitted separately. Any entity, as defined in the rule, within a regulated MS4 area can be potentially permitted by this rule.

*Comment:* Since the guidance document that accompanies this rule could have a significant impact on the scope of a storm water quality program, it is suggested to have draft versions of this document available for public comment as early as possible. (MCHD)

*Response:* A guidance document cannot affect the scope of the rule. The scope is established by the rule itself. The guidance document can, however, help all regulated parties understand the scope and effect of the rule. Draft versions of the guidance document created with input from an external workgroup are public documents, and will be available to interested individuals. The timetable for development of the guidance document will coincide with final adoption of the rule.

*Comment:* It is unclear what the fees are associated with Rule 13. (TOB)

*Response:* Fees associated with Rule 13 are not part of this rulemaking. Proposed fees have not been created, but will be presented to either the Water Pollution Control Board during a separate rulemaking, or the Indiana legislature as part of a statutory revision.

### Designation

*Comment:* In section 3(a) and (b), federal regulations seem to require designation consideration for communities with populations greater than one-hundred thousand (100,000), and the state designation requirements should be consistent with this federal requirement. (COK)

*Response:* IDEM's designation criteria is consistent with federal requirements. Under 40 CFR 122.32, "small" MS4 entities (those entities with a population served by a MS4 less than one-hundred thousand (100,000) people) are regulated if they are located within an urbanized area or designated by

the NPDES permitting authority. Outside of mapped urbanized areas, IDEM, as the permitting authority, has chosen to potentially designate MS4 municipalities with populations seven thousand (7,000) and above.

*Comment:* In section 3(a), the designation requirement for smaller institutions should be revised to allow small MS4 entities comprised of one (1) to three (3) buildings to not be designated for permit coverage under this rule. This allowance is consistent with federal storm water language, as these entity types are not different from office buildings or commercial malls which are not designated by this rule. MS4 entities that are currently paying storm water utility fees to another MS4 entity should not be designated, as the maintenance and operation of the MS4 conveyance is assumed to be borne by the entity receiving the fee payment. Full-time equivalent enrollment is an equitable way to determine designation for colleges and universities. (PU, UW)

*Response:* Under 40 CFR 122.26(b)(16)(iii), the small MS4 definition does not include sewers in very discrete areas, such as individual buildings. Because the number of people is more reflective of considerations for potential storm water impacts than number of buildings, this allowance was not appropriate for colleges and universities meeting the full-time equivalent enrollment threshold. For designation purposes, the issue of MS4 entities paying another regulated MS4 entity for storm water fees is most appropriately handled by the two affected MS4 entities. To seek this designation removal, both the entity paying and the entity receiving the fees must reach some agreement to ensure that the total area is being addressed under one MS4 permit. To be more reflective of on-site conditions, full-time equivalent enrollment is a more useful designation tool than total enrollment for colleges and universities.

*Comment:* In section 3(a)(1), the reference to 1990 United States Census Bureau urbanized area maps should be deleted, since 2000 maps should be available in 2002. (STDC)

*Response:* Because 2000 urbanized area maps were unavailable and IDEM wanted to notify as many potentially impacted MS4 entities as possible with sufficient time to start developing the framework for their storm water program, notifications, in part, have been based on 1990 maps. The designation criteria in the rule should be reflective of the data used for notification purposes, and the 1990 map reference will remain at this time. When additional information becomes available from the United States Census Bureau, Rule 13 will be modified accordingly.

*Comment:* In section 3(a)(2)(A), the language should read “county that has a designated UA; or” to avoid the interpretation that every county is required to obtain a permit. (IACT)

*Response:* The rule already limits designated counties to those containing a mapped urbanized area. The language “a county...that contains a mapped UA” as written in the rule is appropriate.

*Comment:* In section 3(b)(1), the term “sensitive water” may be confused with the term

“sensitive areas” used in long term control plans. (STDC)

*Response:* Sensitive water is defined in this rule, and is not the same as sensitive area.

*Comment:* In section 3(b)(2), entities may be designated if other environmental or water quality programs are ineffective in protecting water quality concerns. The total maximum daily load process, which is implemented by IDEM, should address this issue, and the language should be deleted from this rule. If the language remains, the terms “ineffective” and “water quality concerns” are unclear and should be defined. (IACT)

*Response:* As developed and approved, total maximum daily loads (TMDLs) will likely be a principal process in the regulation of storm water discharges. However, most water bodies are several years away from having an approved TMDL, and the existing rule language will allow permit coverage during this transition period.

*Comment:* In section 3(c), an entity remains designated unless the commissioner determines that the pollutant contribution from the entity is minimal. The term “minimal” is unclear and should be defined. The mandatory designation duration is unacceptable. If an entity loses population under the threshold designation criteria, the entity should be allowed to “drop out” of the storm water permit program. (IACT)

*Response:* The rule language has been revised to allow designated entities to request permit termination during permit reapplications as threshold conditions change. The term “minimal” has been removed.

### Definitions

*Comment:* In section 5(1), the definition should be changed to read “...improve the quality and/or reduce the quantity...” A best management practice may not always achieve both objectives. The term should include land-use planning and policy techniques. (COV, ACI)

*Response:* The definition has been revised to “...and, as appropriate, reduce...” The terms “land-use planning” and “policy techniques” have been added.

*Comment:* In section 5(3), the definition should be clarified to address kennels and local laws that restrict canine access to public areas. (SDMC)

*Response:* The definition has been clarified to exclude kennels.

*Comment:* In section 5(4), the definition should include the listing of septic tanks as a type of Class V injection well. (STDC)



*Response:* The definition has been revised to include septic tank systems.

*Comment:* In section 5(6) and (36), the reference to the May 1996 Indiana combined sewer overflow (CSO) strategy should be changed to the updated 2001 CSO strategy, which was required under Senate Enrolled Act 431. Since it is widely used and accepted, combined sanitary sewer operational plan or CSSOP should be added to the listing of definitions. (STDC, COV)

*Response:* All references in the rule to Indiana CSO policy will be revised to reference the U.S. EPA's 1994 National CSO Policy. Mandated by the 2001 Wet Weather Water Quality Act, Indiana based their CSO policies on the national policy. In discussions with IDEM's CSO program staff, the term combined sanitary sewer operational plan or CSSOP is not used, and it will not be added to the definitions.

*Comment:* In section 5(11), "Indiana department of environmental management" should be capitalized. (ACI)

*Response:* The term will remain as written as it conforms to Legislative Services Agency style.

*Comment:* In section 5(17) and (27), the definitions should exclude "naturally occurring" materials like leaves, grass clippings, or tree limbs. (VBC, WC, MCHD)

*Response:* The definitions have been revised to exclude leaves, grass clippings, and tree limbs.

*Comment:* In section 5(37), the term may be confused with the nine (9) minimum control measures of the long term control plan. Because the implication of the current definition is unattainable for most urbanized areas, the definition should be changed from ensuring "...that storm water quality meets the minimum water quality standards..." to "...reducing the discharge of pollutants to the maximum extent practicable..." (STDC, COFW, IACT)

*Response:* The definition states that the measures are required by this rule, and the six (6) applicable measures are listed. No further clarification is needed. Because of Indiana's requirement that NPDES discharges meet water quality standards at 327 IAC 2-1-6(a)(1) and 327 IAC 2-1.5-8, the less stringent federal maximum extent practicable standard is not applicable.

*Comment:* In section 5(38), the definition should include reference to storm water utility territories. (ACI)

*Response:* The current definition is adequate to allow utility territories to be considered MS4 areas. The definition of MS4 in section 5(40) has been revised to include utilities.

*Comment:* In section 5(39), the definition should clarify the qualifications, if any, for being an

MS4 operator, and the operator's intended role (that is, is the operator an individual or an entity?). (ACI)

*Response:* The MS4 operator is an individual who is responsible for an MS4 area. Because a qualified professional signs the application and parts of the storm water quality management plan, the MS4 operator does not need to have specific qualifications reflective of storm water management. The operator is a coordinator for implementing a storm water program, and ensuring that responsible individuals for each regulated MS4 entity within the operator's MS4 area are developing and implementing the appropriate control measures.

*Comment:* In section 5(40), the language "...owned or operated..." is unclear. Numerous drainage systems are owned and operated by homeowners associations or individual lot owners. Under this scenario, it appears that homeowners associations may be regulated. The term "operate" should be defined for clarity, so that the extent of regulated MS4 conveyance types (for example, private drains maintained by a regulated MS4 entity) can be determined. (CEI, VCED, WC)

*Response:* MS4 conveyances owned or operated by homeowners associations within a regulated MS4 area are potentially subject to this rule. MS4 conveyances owned or operated by individual lot owners are considered private drains and not regulated by this rule.

*Comment:* In section 5(54), the application of this definition appears to contradict situations where private drains (for example, swale and drainage way easements) are maintained by a regulated MS4 entity, and should be clarified. Despite the easement, the regulated community regards backyard swales as being privately maintained. (WC, MCHD)

*Response:* Easement conveyances which are not maintained by a regulated MS4 entity are not required to be addressed under this rule unless the conveyance is an identified source of pollutants. Any conveyance that is actively maintained by a regulated MS4 entity would be regulated by this rule. The guidance document accompanying this rule will clarify issues related to operating MS4 conveyances.

*Comment:* In section 5(56), the definition should include demonstrated experience. Suggested revised text "...state registration, professional certification, completion of coursework, or experience that..." The term differs from the same term defined under 327 IAC 15-5 and 15-6, and should be consistent. The term is vague, and inappropriately could be interpreted that the rule requires a "professional engineer" or similar registration/certification. (ACI, CEI, IACT)

*Response:* The phrase "...or experience..." has been added to the definition. The definition for "qualified professional" was edited to have the terms be consistent in 327 IAC 15-13 and 15-6, but, due to the specific management practice requirements for construction sites, the term in 327 IAC 15-5 is different. The term is written to allow for a broad range of individuals, including, but not limited to,

professional engineers, to potentially meet the qualification requirements.

*Comment:* In section 5(67)(C), the term “relevant community value” is unclear. (STDC)

*Response:* The term is written to maximize flexibility for local conditions and interpretations. Areas of value to a community should be determined by the community. To provide some clarity, examples of these areas will be provided in the guidance document accompanying this rule.

*Comment:* In section 5(68), the definition should be changed to read “...means a public or private body or activity that contributes pollutants into an MS4...” A number of bodies could be considered significant contributors of pollutants, but, based on the definition for entity in the rule, would be unregulated. For designation clarification, the definition should be based on qualitative criteria, rather than an all-encompassing term. (COV, ACI)

*Response:* Because there has been no precedent in establishing qualitative criteria for defining a significant contributor of pollutants, none is being written. Criteria for this definition may be addressed in the guidance document accompanying this rule. MS4 entities, and not IDEM, are responsible for regulating individual businesses or homeowners. Therefore, changing the definition to reflect private bodies or activities is not appropriate. The definition was revised to include industrial facilities, which can be regulated at the state level.

*Comment:* In section 5(71), the term “objectionable substances” is unclear. (STDC)

*Response:* Language in this definition was taken from existing state regulations. Using the term “objectionable substances” is consistent with other rules.

*Comment:* In section 5(77), the word “daily” must be inserted before the word “individual” every time the definition of total maximum daily load is fully stated, and after the phrase “a water body” to reinforce the concept of setting a daily load. (STDC)

*Response:* Where appropriate, the word “daily” has been inserted for clarity.

#### Notice of Intent Letter and SWQMP-“Part A” Requirements

*Comment:* In section 6(a)(1), concerns were raised over the type of qualifications needed to be an MS4 operator, and the apparent need to develop a state-issued registration or certification training process. (WC)

*Response:* Because a qualified professional signs the application and parts of the storm water quality management plan, the MS4 operator does not need to have specific qualifications reflective of storm water management. The operator is a coordinator for implementing a storm water program, and

ensuring that responsible individuals for each regulated MS4 entity within the operator's MS4 area are developing and implementing the appropriate control measures. IDEM does not foresee a registration or certification process.

*Comment:* In section 6(a)(2), the extent of "all known receiving waters" is unclear, related to streams and ditches. (MCHD)

*Response:* The intent of this requirement is to provide a listing of all known, "named" waters that receive storm water discharges from an MS4 area. Receiving waters would include lakes, ponds, reservoirs, rivers, creeks, streams and ditches that are "named" and considered waters of the state.

*Comment:* In section 6(a)(4), the appeal procedure should be rewritten and made a separate subsection. Suggestion to change language to read "an aggrieved person must appeal within fifteen (15) days of the second public notice date," and to state specific procedural requirements in the new subsection. To avoid unintended drainage issue conflicts, the rule language "...wishes to discharge..." should be changed to "...intends to discharge..." The intent of the statement "...should not be available to the discharger..." in clause (F) needs to be clarified. (STDC, COV)

*Response:* The rule language concerning appeals has been modified.

*Comment:* In section 6(b)(1), the differences between the MS4 operator, primary contact individual, and responsible individual are unclear. (MCHD)

*Response:* The MS4 operator is a coordinator for implementing a storm water program, and ensuring that responsible individuals for each regulated MS4 entity within the operator's MS4 area are developing and implementing the appropriate control measures. The primary contact individual is the person who will maintain the records pertaining to an MS4 permit for an MS4 area. This person will act as the primary contact for compliance information, and could be the same individual as the MS4 operator. The responsible individual is a person that is responsible for a regulated MS4 entity's storm water program. This third term would be applicable to co-permittee situations, when each regulated MS4 entity needs to designate a responsible individual.

*Comment:* In sections 6(c)(3) and 8(a)(8), the requirements for an itemized budget are inappropriate, unrealistic, burdensome, and should be deleted, partly because the budgetary information may not be available by the March 2003 deadline. It is more appropriate to submit budgetary information with the SWQMP-"Part C." Multiple municipal departments and nonsegregated storm water activities make this estimate difficult to obtain. It appears that IDEM is requiring MS4 entities to provide cost estimates for developing and implementing a storm water program, but IDEM should be providing this information as part of the fiscal impact analyses. (HBC, MCHD, ACI, VCED, COE, WC, TOB)

*Response:* The required budget information is only an initial estimate of monies and sources, and not intended to reflect actual spending. Included in the December 1999 NPDES final rule covering 40 CFR Parts 9, 122, 123, and 124 in the federal register, U.S. EPA conducted a fiscal impact analysis for implementing Phase II storm water requirements. Submittal of budgets with permit applications is consistent with the individual permit requirements of 40 CFR 122.26(d)(1)(vi). Submittal of an annual fiscal analysis is consistent with the individual permit requirements of 40 CFR 122.26(d)(2)(vi). The purposes of providing an estimated budget with the application and annually are to ensure adequate funding is being allocated to development and implementation of a storm water program and to determine funding source alternatives for regulated entities. The various sources of funding information will be compiled by IDEM and accessible to regulated entities.

*Comment:* In section 6(i), the public should be informed that a notice of deficiency has been issued for an inadequate notice of intent letter or SWQMP-“Part A.” This section should also describe the effect of a notice of deficiency on the appeal procedure. (STDC)

*Response:* The purpose of a general NPDES permit is to decrease the amount of time needed to write and process permit information. Public notification of every notice of deficiency letter could be a time-consuming process, and, depending on the severity of the deficiency, could be overly burdensome. When a permittee receives a notice of deficiency, notice of sufficiency, or notice of termination letter, the information will be stored in IDEM’s storm water database, where data will be readily accessible for public inquiries. The appeal procedure language is being modified from its current form.

*Comment:* In section 6(j), the date on the notice of deficiency letter should be the same date it is mailed, not when it is written, or the thirty (30)-day response time should start on the date the notice of deficiency letter was received by the MS4 entity. In some instances, the thirty (30)-day response time may not be sufficient, and a provision for extending the time to forty-five (45) days should be added to the rule language. (ACI, SDMC)

*Response:* Because a notice of deficiency letter should be mailed on the same day it is written, the thirty (30)-day response time should start from the date on the notice of deficiency letter. The thirty (30)-day response time is sufficient, and extension language will not be added to the rule.

#### SWQMP-“Part B” Requirements

*Comment:* In section 7, the intent of the protocol is unclear, and needs clarification. The section appears to have two (2) intents, a one-time, baseline characterization to assist in the developing of a Part C of the SWQMP and an on-going monitoring program with submitted data in each annual report. More innovative and creative methodologies, such as using stream water quality stations, for indicating water quality improvements should be provided and encouraged. (CE, MCHD)

*Response:* Section 7 has been revised to clarify both intents. A baseline characterization and on-going monitoring plan are both required by Part B of the SWQMP. Through external workgroup discussions, it was determined that the most appropriate approach would be to allow flexibility in the characterization. The rule does not discourage innovative and creative means for characterizing water quality, but does not require them. There are minimum requirements for a sufficient Part B to create more uniformity and consistency in the plan review process, but each regulated MS4 entity can assess the MS4 area water quality in any fashion most suitable to that area.

*Comment:* In section 7(a), the subsection language referring to identification of pollutant problem areas should be deleted. If the language remains, the term “pollutant problems” is unclear and should be defined. The assessment requirement may be difficult, especially for parameters such as E.coli bacteria, without monitoring for segments on the receiving water that contains multiple storm water outfalls. Clarification is needed, as it appears that monitoring must take place in order to fulfill this requirement. The specific requirements and intent for investigating land usage and assessing best management practice locations are unclear. Depending on the types of conveyances regulated under this rule, monitoring, and eventually mapping, all outfalls would be virtually impossible. (IACT, SDMC, WC, MCHD)

*Response:* One of the primary purposes of the baseline characterization is to identify substantial pollutant sources impacting storm water run-off quality, so that appropriate best management practices can be developed and implemented. This characterization should identify obvious pollutant sources, or, if exact sources can not be determined, problem areas where best management practices should be targeted and utilized. If a regulated MS4 entity feels that E.coli bacteria, or some other specific parameter, is a concern for the MS4 area, than biological or chemical monitoring would likely be necessary. However, unless it is identified as a means of assessment by the MS4 entity, specific parameter monitoring is not required by this rule. Rule language has been revised to clarify the minimum requirements and intent of specific items. By researching information required by this section, it is assumed that some acceptable assessment of the water quality can be performed without physical sampling of each receiving water and storm water outfall discharge. Under one (1) of the six (6) minimum control measures, all storm water outfalls under the jurisdiction of the MS4 operator will eventually be assessed for illicit discharges. The illicit discharge assessment is not part of the Part B submittal.

*Comment:* In section 7(c), the public should be informed that a notice of deficiency has been issued for an inadequate SWQMP-“Part B.” It was suggested that a notice of deficiency response timetable consistent with section 6(j) be included in this section. (STDC, SDMC)

*Response:* Public notification of every notice of deficiency letter could be a time-consuming process, and, depending on the severity of the deficiency, could be overly burdensome. When a permittee receives a notice of deficiency, notice of sufficiency, or notice of termination letter, the information will be stored in IDEM’s storm water database, where data will be readily accessible for

public inquiries. The thirty (30)-day response time is sufficient, and extension language will not be added to the rule.

### SWQMP-“Part C” Requirements

*Comment:* In section 8(a)(2), MCM should be defined. (ACI)

*Response:* The rule language has been revised to state “...minimum control measure (MCM)...”

*Comment:* In section 8(a)(3), a schedule of implementation milestones is required. Yet, a compliance schedule is presented in section 11 of the rule. The difference is unclear. The overall implementation schedule should be more flexible than the one described in section 11 to allow sufficient time for local approval processes. (TOB)

*Response:* The timetable referenced in section 8 addresses implementation of specific controls identified by the MS4 entity, and can be very flexible. Some of the compliance schedule deadlines in section 11, such as mapping, will need to be addressed in Part C of the SWQMP, but the majority of the section 11 schedule must be implemented prior to the submittal of the Part C. The current rule language allows for one (1) year to develop programs for five (5) of the six (6) minimum control measures, and up to two (2) years to develop a program for the measure related to post construction run-off control. The rule language establishes the minimum control measure programs early in the five (5)-year permit term, which is consistent with federal requirements, and also allows for program modification and improvement throughout the permit term.

*Comment:* In section 8(a)(4), the narrative and mapped description of the MS4 area boundaries must be submitted. Since IDEM is defining the regulated areas, it appears that IDEM should provide this description. (VCED, WC)

*Response:* IDEM has designated entities based on urbanized area maps, but the exact boundaries of the regulated areas are not necessarily known. Instances may occur where the regulated MS4 area boundary does not correspond to an urbanized area boundary, such as counties wishing permit coverage for the entire county or MS4 entities designated outside of mapped urbanized areas. The boundaries of smaller MS4 entities, such as colleges or correctional facilities, may not be listed on corresponding urbanized area maps, and need to be defined for distinguishing areas of permit coverage.

*Comment:* In section 8(a)(5), the estimated linear footage of MS4 conveyances will not be completely available until the storm water drainage system map is completed. Therefore, the accuracy requirements for data submitted with the Part C documentation is unclear. In reference to including curb and gutters, the extent of MS4 conveyance types is unclear. (VBC, WC, MCHD)

*Response:* IDEM acknowledges potential accuracy problems with the data, but the purpose of

requesting an estimated footage is to obtain a general idea of the total conveyance system. For one of the control measures, twenty-five percent (25%) of the total system must be mapped each year after the first year. To estimate the twenty-five percent (25%)-criteria, some estimate of the total conveyance system footage must be provided. For mapping purposes, the rule language has been revised to clarify conveyance types. Curbs and gutters would not be required, as the mapping should address the point from inlets to outfalls in piped conveyance systems.

*Comment:* In section 8(a)(6), allowed structural best management practice types must be provided. If a new technology is available and desired, the process for allowing the new practice, if any, is unclear. (MCHD)

*Response:* The allowance of specific best management practices is determined by the MS4 entity. If a new technology is allowed by the entity, the relevant Part C language must be revised and submitted to IDEM in accordance with section 8(f) of the rule.

*Comment:* In section 8(a)(7), the structural best management practice performance standard requirement is unclear, in reference to types of practices (e.g. applying stone for construction site access, using mulched seed) that require a standard. Implementation of a practice is more important than a manufacturer's performance standard. (MCHD)

*Response:* Performance standards should only be established for long-term structural best management practices, and those practices that deal with temporary construction site run-off control do not need to be addressed.

*Comment:* In section 8(a)(9), it is unknown how certain minimum control measure implementation items (for example, storm drain marking) will demonstrate an environmental benefit. The term "demonstrate results" needs more definition. To assign a specific degree of water quality improvement to a minimum control measure is difficult, and may not be a wise expenditure of resources. (VCED, MCHD)

*Response:* Certain control measures, like storm drain marking, have implied environmental benefits when combined with an appropriate educational campaign. It is very important to correspond control measure implementation to a demonstrated environmental benefit. These benefits will be clarified in the guidance document accompanying this rule.

*Comment:* In sections 8(a)(11) and (b), a good guidance document is needed to provide more programmatic indicator detail (for example, how to determine the percentage of citizens who have an awareness of storm water quality issues) and definition (for example, awareness of storm water quality issues, appropriately sized vegetated filter strip, acceptable stabilization of roadside shoulders or ditches). Indicators, such as the one related to constituent awareness, seem unrelated to water quality improvements, and, if necessary, should be related to something less difficult to obtain, like the number



of citizens receiving information. Because of the burden to collect the mandatory indicator data, it was suggested to list these indicators as “may” be used to allow more public involvement and planning to determine which indicators are most useful and applicable to a specific MS4 entity. If the indicator list is optional, it would be better suited in the guidance document accompanying this rule. If certain indicator operations (for example, street sweeping) are not currently conducted and are mandatory, initial expenses could be overly burdensome. Since some of the indicators require data that will not be completely available until the storm water drainage system map is completed, the accuracy requirements for data submitted with the Part C documentation is unclear. The proposed language specifies activities, and will limit future best management practice development, innovation, and flexibility. (STDC, VBC, COFW, COE, SDMC, WC, CE, MCHD, TOB)

*Response:* As necessary, the guidance document accompanying this rule will clarify requirements. As a compromise to requiring biological or chemical monitoring, IDEM, with extensive input from external workgroup members, feels that utilization of required programmatic indicators is necessary for program consistency. Rule language for this subsection was revised to clarify unclear terms and appropriateness of specific indicators. For the specific comment related to constituent awareness, the goal is to assess and change behavior, and not to count distribution numbers. As for submittal timing and accuracy of the data, rule language states that data does not need to be obtained for each indicator for the Part C submittal. The Part C submittal should include a listing of which indicators will be used, and, as appropriate, justification for unused ones. Based on local conditions, certain indicators may not be appropriate. These inappropriate indicators are not mandated.

*Comment:* In section 8(b)(5), clarification is needed on the types of MS4 conveyances used to estimate linear feet or percent mapped. (WC)

*Response:* Mapping should include open ditches and, for piping conveyances, point of inlets to the point of outlet into a receiving water. Mapping is not required for curbs, gutters, and roadways.

*Comment:* In section 8(b), the term “public information request” in subsection (b)(16) is unclear, as it relates to types or requests and storm water quality. The referenced terms “business” and “commercial” facilities need to be defined. The reference to a storm water run-off permit in subsection (b)(13) is unclear. In subsection (b)(26), the placement of a vegetated filter strip and the meaning of unvegetated swale is unclear. In subsection (b)(28), the application of stabilization requirements is unclear. (SDMC, MCHD, TOB)

*Response:* Public informational requests for construction sites can be any request related to the site, not just requests dealing with run-off pollution problems. The term “businesses” has been deleted from section 12(a) in rule language, and, based on this deletion, a definition for “commercial facility” is not necessary. The storm water run-off permit in subsection (b)(13) pertains to the permits issued for land disturbing activities associated with the construction site run-off control minimum control measure. The placement of a vegetated filter strip would be in an appropriate, feasible, and cost-effective

location. The filter strip indicator deals with new construction, and may not be an appropriate option for all locations. Unvegetated swales and ditches are swales and ditches that lack sufficient filtering of pollutants, and potentially increase downstream conveyance sedimentation. The roadside shoulder and ditch stabilization refers to municipal operations and maintenance, and does not relate directly to construction site storm water run-off controls.

*Comment:* In section 8(b)(10), reporting household hazardous waste collection data appears burdensome and unrelated to improving water quality, especially if the program is run privately and the data is not readily available to regulated MS4 entities. (TOB)

*Response:* Household hazardous waste programs are federally encouraged as a means to reduce illicit discharges into MS4 conveyances. By providing a collection and education program for used oil and toxic chemicals, potentially harmful materials can be diverted from improper disposal into an MS4 conveyance. If the program is implemented privately, that data should be available to a regulated MS4 entity. Recycling collection data is not an indicator requirement for this rule.

*Comment:* In section 8(b)(21), (22), (32) and (33), the open space acreage indicator is unclear (for example, space preserved by government agencies only, space that is not impervious, minimum requirement for the amount of open space preserved, mapping open spaces), and, if open space mapping is required, it should be clearly written into the rule. Since mapping the acreage of pervious and impervious surfaces is not required by this rule and gathering such data could be a very expensive and time-consuming task, it is suggested that the programmatic indicator dealing with pervious and impervious surfaces estimates be deleted. The indicators dealing with open space, pervious and impervious surface, and collected solid waste material amounts should be estimated and not actual calculations. Due to operational difficulties in tracking, the solid waste material amounts should not be segregated by structure type, and the references to unit type (that is, “by weight”) should be deleted from rule language. (VBC, SDMC, WC, MCHD, TOB)

*Response:* Open space is any area that can improve storm water run-off quality by vegetative filtering and infiltration. The rule does not require mapping open space or pervious and impervious surfaces, but, if this information is gathered by a regulated MS4 entity for better planning and assessment, the information should be provided as indicator data. If this indicator data is not collected, the MS4 entity simply has to justify the omission. The amounts and other relevant indicator data are estimated, and the rule was revised to reflect this allowance. The reference to segregation by structure type has been deleted from rule language. The reference to unit type will remain in the rule to provide reporting consistency. The guidance document accompanying this rule will include a conversion equation from volume to weight.

*Comment:* In section 8(b)(25), clarification is needed on the types of operations (for example, municipal, commercial, or homeowner) to account for in the area determinations of pesticide and fertilizer applications. The indicator dealing with pesticide and fertilizer application areas should be

estimated and not actual calculations. Due to its relative impact compared to unregulated agricultural operations, tracking pesticide and fertilizer applications should be deleted from the rule language. (SDMC, WC, TOB)

*Response:* Pesticide and fertilizer applications relate to municipal operations. Although educational outreach efforts should target them, commercial and homeowner application tracking is not required. Rule language has been changed to reflect estimates for acreage, square footage, and amount applied. Under the individual permit requirements of 40 CFR 122.26(d)(2)(iv)(A)(6), federal language requires MS4 entities to develop and implement a program dealing with the application of pesticides, herbicides and fertilizer. The application of these materials should be tracked under general permits.

*Comment:* In section 8(b)(34), the regulation of canine parks is not important, when compared to problems caused by geese on ponds. (TOB)

*Response:* Animal waste can be considered an illicit discharge source. The regulation of canine park locations is a starting point to address the animal waste contribution to a regulated MS4 conveyance. The listed indicators and rule requirements are minimum conditions, and MS4 entities are encouraged to go beyond these requirements to address any locally significant pollutant contributing sources.

*Comment:* In section 8(e), the thirty (30)-day response time to a notice of deficiency is insufficient, and should be extended to forty-five (45) days. (SDMC)

*Response:* IDEM believes the thirty (30)-day response time is sufficient, and extension language will not be added to the rule. The thirty (30)-day response time has been utilized successfully in other areas of the storm water program, and is consistent with those program compliance requirements.

*Comment:* In section 8(g), Part C of the SWQMP must be certified by a qualified professional. Concerns were raised over the type of documentation needed to demonstrate experience in storm water control and water quality issues, and the apparent need to develop a state-issued registration or certification process. (VBC, WC, TOB)

*Response:* The term is written to allow for a broad range of individuals to potentially meet the qualification requirements. Demonstrated experience can consist of any combination of schooling and training, professional certifications, and relevant employment experience. It is assumed that this combination should total five or more years. There is no formal documentation submittal requirement for qualifications, and the state will not be developing a registration or certification process.

#### General Implementation Requirements

*Comment:* In section 9(c), it is unclear what affect an issued notice of deficiency or appeal under section 6 of this rule would have on the compliance schedule. (STDC)

*Response:* Based on the time frames for review and response and the type of submittal items in the compliance schedule, a notice of deficiency letter should not affect the stated deadlines. Language referring to appeals is being modified.

*Comment:* In section 9(g), the term “punishment” should be changed to the more commonly used term “penalty”. (STDC)

*Response:* Because fines and imprisonment are potential outcomes, the term “punishment” more accurately describes the ramifications of falsifying documents.

*Comment:* In section 10(d)(1), the statement should read “...storm water run-off from MS4 areas.” The requirement is too vague, in reference to specific methodologies for conducting an adequate pollutant identification (for example, basing the identification on maintained designated and existing uses and requiring reasonable potential to exceed analysis for water quality criteria). (COV, SDMC)

*Response:* The word “...run-off...” has been added. The identification process required by this subsection is referring back to the Part B of the SWQMP. In the Part B document, there is a baseline characterization requirement to identify pollutant problem areas, and, in the on-going monitoring plan, to develop appropriate implementation schedules for installing or initiating best management practices to improve storm water quality from the identified problem areas.

*Comment:* In section 10(d)(2), the requirement is too vague, in reference to assessing the water quality without requiring monitoring and for discharges outside of jurisdictional control. Some of the existing data is questionable and inapplicable. The assessment frequency and type of parameters are unclear. (SDMC, MCHD)

*Response:* The assessment process required by this subsection is referring back to the Part B of the SWQMP. In the Part B document, the specific means to conduct the water quality assessment is flexible and determined by the MS4 entity, based, in part, on local conditions and available information. Unless it is identified as a means of assessment by the MS4 entity, specific parameter monitoring is not required by this rule.

*Comment:* In section 10(d)(3), compliance with the minimum water quality standards described in 327 IAC 2-1-6(a)(1) is referenced. The referenced language is too subjective and ambiguous, and needs to be rewritten to eliminate vague language like “objectionable,” “unsightly,” “extent of their authority,” and “create a nuisance.” The intent (that is, discharges total “free” of pollutants, or reduction in pollutants to a point where the pollutants no longer pose a concern) of this

requirement is unclear, and it is suggested to place a timetable in the rule language to meet this requirement. Received comments stated that these standards are too restrictive and unattainable for storm water discharges, and this compliance condition does not provide the same degree of flexibility (i.e. to the maximum extent practicable) as promoted by federal storm water regulations. Federal storm water language states that stringent, numeric water quality limitations should not be required for regulated MS4 entities. All MS4 entities will be out of compliance when the notice of intent letter is submitted. The referenced standard should be reviewed and changed to something more reasonable for Indiana's storm water discharges. (VBC, COV, COFW, ACI, HC, IACT, WC)

*Response:* The referenced language is already in Indiana rules, and applicable to all NPDES-permitted discharges. Until this standard is changed, all Indiana NPDES-regulated dischargers, including those regulated by this rule, must comply with the requirements of 327 IAC 2-1-6(a)(1) or 327 IAC 2-1.5-8.

*Comment:* In section 10(d)(3), the regulation appears to address the quality of storm water discharges attributable to agricultural land use practices. Implied regulation of agricultural operations by storm water rules is not consistent with federal intent. Concerns were raised over the liabilities of an MS4 operator to ensure compliance with this rule when unregulated agricultural pollutant sources are identified as the primary receiving water impairment in a regulated MS4 conveyance. There are many other potential pollutant contribution examples that could prevent an MS4 operator from ensuring compliance to the "extent of their authority." An MS4 operator may never reach compliance with the referenced standards. Suggested language change to read "Make every reasonable effort to ensure compliance with...". (VBC, COV, HC)

*Response:* IDEM does not intend to have MS4 entities regulate agricultural land use practices within the MS4 area. When agricultural practices are identified as pollutant sources, IDEM is recommending that the source information be provided to appropriate staff at the local soil and water conservation district or natural resource conservation service office. Given their operational responsibilities, staff at these offices should provide technical assistance to the agricultural community on voluntary practices to reduce impacts on receiving water.

*Comment:* In section 10(d)(3) and appropriate subsections, the reference to 327 IAC 2-1-6(a)(1) should be expanded to include a reference to 327 IAC 2-1.5-8 for discharges to Indiana's Great Lakes Basin waters. (STDC, SDMC)

*Response:* Subsections (d)(3) and (d)(3)(D) have been revised to include reference to 327 IAC 2-1.5-8.

*Comment:* In section 10(e), a schedule and process for reviewing and modifying the SWQMP after an applicable total maximum daily load is approved should be included. Language should reflect instances when plan modification is not required, such as upstream water quality violations. This rule

does not adequately explain the impact an approved total maximum daily load will potentially have on a regulated MS4 entity. (ACI, IACT, TOB)

*Response:* An approved total maximum daily load (TMDL) will identify sources of impairment. As applicable, the TMDL program will provide the requirements of an approved TMDL to a regulated MS4 entity. Upstream pollutant sources will be identified, and, if upstream sources are the only ones contributing to the impairment, a regulated MS4 entity's SWQMP will not need to be revised. If Parts B or C of the SWQMP need to be revised, the changes must be described and submitted to IDEM in the corresponding annual report in accordance with 327 IAC 15-13-7(e) and 327 IAC 15-13-8(f).

### Compliance Schedule

*Comment:* In section 11, a compliance deadline extension duration limit should be set. (STDC)

*Response:* The extension request should state a revised deadline date. Depending on the situation causing the extension request, the duration could be highly variable, and setting a limit on the extension would reduce permittee flexibility. IDEM will retain the authority to deny the request, or reduce the extension duration.

*Comment:* In section 11 and other relevant sections of the rule, the compliance schedule related to submittal of the parts of the SWQMP should be revised to allow additional time for development of more comprehensive plans. The suggested timetable is to submit the Part A with the notice of intent (NOI) letter, the Part B within one-hundred eighty (180) days of the NOI letter submittal, a baseline water quality characterization report based on the one-hundred eighty (180)-day protocol submittal within one (1) year of the NOI letter submittal, and the Part C within two (2) years of the NOI letter submittal. (CE)

*Response:* Based, in part, on the shorter federal submittal timetable, IDEM feels that the current rule submittal requirements are appropriate. IDEM feels that submittal of a total SWQMP within one (1) year is reasonable, and, based on similar proposed programs in other states that the United States Environmental Protection Agency has reviewed, will be allowed by United States Environmental Protection Agency.

*Comment:* In section 11 and other relevant sections of the rule, the compliance schedule is clearly more aggressive than the flexible implementation schedule envisioned by federal language. If, after implementing the six (6) minimum control measures, there is still water quality impairment associated with discharges from the MS4 conveyance, federal language allows for program refinement over a period of two (2) to three (3) five (5)-year permit cycles. The proposed schedule should reflect federal language. (IACT)

*Response:* The compliance schedule is not overly burdensome, and actually allows more time

than federal requirements. Under 40 CFR 122.33(a)(1), selection of best management practices and measurable goals are required with the submittal of a notice of intent. Indiana's compliance schedule allows more flexibility by phasing in various parts of the SWQMP. Indiana's rule, as stated in the compliance schedule and in various sections, also allows for continual program refinement. This refinement, as inferred in section 19(e), could continue indefinitely.

#### SWQMP Minimum Control Measures

*Comment:* In sections 12 through 17, structural and nonstructural best management practices are required. The guidance document that accompanies this rule should define acceptable best management practices. (VCED)

*Response:* Acceptable best management practices are site and condition dependent. Therefore, determining acceptable practices will likely be the responsibility of the MS4 entity. If a need is expressed, IDEM can provide a listing of known best management practices in the accompanying guidance document to this rule.

*Comment:* In sections 12 through 17, specific reduction percentage goals are identified. There is no current local data for some of the required goals, and it is very difficult to determine a reduction percentage based on limited information. Some of these goal reductions may be intentionally very minimal, so that unrealistically large goals are not draining limited resources to maintain compliance. The methodology for identifying specific goal reduction percentages should be provided. (COV)

*Response:* Based on differences in current storm water programs, goal reduction percentages are unique to a regulated MS4 entity. Prior to this rule, an MS4 entity may have already implemented some, or all, of the minimum control measures. Because of this implementation, the corresponding reduction percentages may be lower than percentages for an MS4 entity that is only beginning to implement the minimum control measures. The percentages should be estimated through an assessment of current practices, and revised as data is collected.

*Comment:* In sections 12 through 17, certification forms are required, and this requirement seems redundant. Because the SWQMP and annual reports are already certifying progress and compliance, the certification form requirements should be deleted. (CE)

*Response:* To determine when control measure programs are implemented, IDEM believes that some type of compliance documentation needs to be submitted for each of the minimum control measures. The certification forms serve this purpose, and ultimately require an MS4 operator, by signature, to ensure the proposed control measure programs are adequate for compliance with this rule.

*Comment:* In sections 12(d), 13(d) and 14(k), the requirements to review and modify, if

necessary, the stream reach characterization and evaluation report (SRCER) and combined sewer overflow operational plan (CSOOP) are inappropriate, and these subsections should be deleted. Proposed rule 327 IAC 15-13-3(h) excludes discharges from combined sewer systems. There is no current requirement in the federal combined sewer overflow (CSO) control policy, Indiana's final CSO strategy, or Senate Enrolled Act 431 that requires public education and outreach. The long term control plan (LTCP) should be coordinated with MS4 activities. (SDMC)

*Response:* The SRCER and CSOOP do not have public education and outreach or public involvement and participation components. The rule language has been revised to delete references to these documents in sections 12 and 13. However, there is potential overlap for all three documents in section 14. While the LTCP does not have a public education component, IDEM feels that public education is essential for an adequate, required public participation component in the LTCP. Since a LTCP will not be approved without appropriate public education, the reference to LTCPs will remain in sections 12(d), 13(d) and 14(k).

*Comment:* In sections 14 through 16, ordinances or other regulatory means are required to satisfy permit requirements. To assist colleges and universities without ordinance authorities, IDEM should provide specific types of alternative policies that could be considered equivalent to an ordinance. (PU, UW)

*Response:* Due to the large number of possible forms such regulatory means could take, IDEM will not provide specific alternatives in the rule. However, IDEM is willing to assist in the development of such a document for inclusion in the guidance document accompanying this rule.

*Comment:* In section 12, IDEM should provide guidance and assistance in locating existing programs and already prepared outreach materials. As it pertains to subsection (a), the difference between "business" and "commercial" facilities should be specified. (STDC, SDMC)

*Response:* IDEM, when possible, will provide guidance and assistance in locating existing programs and outreach materials. IDEM's outreach efforts will include the development of "template" outreach materials. The term "businesses" will be deleted from this subsection. Based on this deletion, a definition for "commercial facility" is not necessary.

*Comment:* In section 12(c), language implies that the given examples are requirements. By requiring specific goals, IDEM is imposing strategies that may not fit the local strategy for educating the public. These examples should be options, and the language should be reflective of this flexibility. (IACT, CE)

*Response:* Specific goals were required to reduce subjectivity and improve consistency during review of an MS4 entity's program.



*Comment:* In section 13(c), IDEM should provide supporting documentation that proves storm drain marking or web site development results in measurable improvements to water quality. Programs, such as storm drain marking, may not be necessary. By requiring specific goals, IDEM is imposing strategies that may not fit the local strategy for involving the public. The goals should be options. (VBC, VCED, WC, CE)

*Response:* Improvements to water quality are implied for many of the public education and participation components. The implication for storm drain marking and web site development is that, when combined with a sufficient public educational campaign, some portion of the MS4 area constituency will be more aware of the impact they are having on water quality, and, as a result, they will be less likely to have illicit connections or improperly dump materials in identified storm drains.

*Comment:* In section 14, IDEM should provide guidance and assistance in locating existing programs and already prepared outreach materials. The term “illicit” should be changed to “illegal” or “unpermitted” for clarification. In unsewered areas that are designated, septic system discharges may be a significant illicit discharge source. To correct these sources, expensive sanitary sewer construction may be the only available corrective action. It is recommended to change the rule language to state that the illicit discharge will be eliminated if it can be done within the budgetary constraints of the MS4 operator. Prohibiting illicit discharges is unrealistic, because anything other than pure rain water may be considered an illicit discharge. In cases of spot dumping, the requirement to have an ordinance that eliminates, via tracking and homeowner fines, illicit discharges is unrealistic. IDEM, and not the local MS4 entity, should have the primary role of eliminating and permitting discovered illicit discharges. (STDC, VBC, WC, MCHD)

*Response:* The term “illicit” is consistent with federal language and will remain. Since this rule is not intended to correct all septic system problems, rule language has been revised to allow for budgetary considerations in addressing septic system discharge sources. The prohibition of illicit discharges is consistent with federal language, and will remain in the rule. In addition to pure rain water, naturally-occurring materials and the items listed in 327 IAC 15-13-14(d) will not typically be considered illicit discharges. IDEM realizes that tracking all spot dumping is not easy, but, through appropriate ordinances, alternative disposal options (that is, household hazardous waste and “white goods” collections) and educational campaigns, spot dumping should be reduced. This rule, based on federal language, requires each regulated MS4 entity to develop, implement, and enforce an illicit discharge detection and elimination program. IDEM can assist in enforcement of this control measure, but the appropriate authorities must be obtained on a local MS4 entity level.

*Comment:* In section 14(b), the language should be amended to “in the particular MS4 area under the operator’s control” after the word “outfalls.” The mapping requirements, in reference to map scales and format (for example, hand drawn or digital), need to be clarified in the guidance document accompanying this rule. There appears to be an inconsistency between the mapping requirements (that is, the entire conveyance system or only outfalls) of this section and the requirements of section 8(b)(5)

of this rule. Because of the presence for potential illicit discharges, private drain mapping and monitoring should be required. (STDC, COV, VCED)

*Response:* The rule language has been revised to include the suggested language pertaining to an MS4 operator's control. The mapping format requirement is written to allow all MS4 entities to comply, regardless of technical capabilities. IDEM feels that, the more accurate the mapping, the more beneficial the map will be to the regulated MS4 entity in determining potential or actual pollutant problem areas, identifying discharges near sensitive water areas, and tracing pollutant sources. The mapping requirement is applicable to the outfall conveyance system, not just the outfalls. For sewer pipe conveyances, the mapping should be from inlet structures to the point of outfall. In consultation with potentially affected entities, IDEM determined that private drain system mapping would not be required. For a regulated MS4 entity wishing to address private drains, IDEM would highly encourage efforts that exceed the minimum requirements of this rule.

*Comment:* In section 14(c), clarification is needed on the intent and operator authority for "regulating the rate at which water flows through the drainage system." Federal storm water language does not address regulating flow rate, and this requirement should be deleted from rule language. There are local cases in which detention is not effective or feasible, so the regulation of flow rates should not be a requirement. If the intent is to reduce the volume of storm water, the rule should be revised and the recommended methods for retaining storm water should be described. The rule language needs to be strengthened to ensure that the appropriate authority is given to an MS4 operator to create and enforce the rule requirements. (STDC, MCHD, ACI, CEI, SDMC, CE)

*Response:* By slowing the rate at which storm water flows, more infiltration and settling can occur, outfall scouring and stream bank erosion can be reduced, and the overall storm water quality should improve. This practice is not required in all situations, and should only be used where it is technically feasible, beneficial to water quality and cost-effective.

*Comment:* In section 14(e), regulating swimming pool discharges are unrealistic and unjustified, and the referencing rule language should be deleted. This requirement is unenforceable, and will give Rule 13 a bad name. (HBC, WC, MCHD)

*Response:* In 327 IAC 15-13-14(d), dechlorinated swimming pool discharges are allowed unless they are deemed a pollutant contributor to the MS4 conveyance. In this rule language, there is no allowance for chlorinated pool discharges. The requirements of subsection (e) will provide specific procedures to ensure that the pool discharges are considered dechlorinated. IDEM does not expect MS4 entities to oversee every homeowner's pool discharge, but, by developing appropriate ordinance language and conducting a targeted educational campaign, the potential short-term impact on water quality from chlorinated pool discharges may be reduced. The intent of the dechlorination requirement is to develop an awareness in the regulated MS4 area that chlorinated water can cause an impact on water quality, and to provide an adequate procedure that minimizes the impact.

*Comment:* In section 14(f), the acceptable field screening protocol is unclear, in reference to the parameter and testing kit types, and testing “by other means.” The MS4 operator should not be mandated to use a particular type of equipment for testing (for example, nitrate-nitrogen analysis may not be included in a test kit, but may be a cause of algae bloom) or analyze for unnecessary data (for example, analyzing for a parameter not listed as an impairment parameter for a receiving water). Language should be revised to address only suspected problem discharge parameters. Substantial costs could be incurred for tracing sources (for example, televising) and screening. In reference to potential contact with environmental and health hazards, the training requirements for a person conducting the screening are unclear. (STDC, VCED, SDMC, MCHD)

*Response:* The purpose of dry weather screening is to observe non-storm water flows, identify the presence and, where possible, the type of pollutant, trace, if possible, the source of the pollutant, and correct or eliminate, if feasible, the pollutant source. To accomplish this screening, a field test kit, or some similar testing equipment and procedures, will be required. IDEM is not mandating a particular type of test kit or specific parameters, but recommends, based on a United States Environmental Protection Agency guidance document for investigating inappropriate pollutant entries into storm drain systems, that certain field screening parameters be addressed in the determination of pollutant type. This screening protocol (which includes standard operating procedures and an implementation schedule) is determined by the regulated MS4 entity, and must be submitted in Part C of the SWQMP. A summary of screening implementation activities is expected with each corresponding annual report submitted to IDEM. In comparison to the alternative of sampling and laboratory analysis, the costs for screening are relatively minimal. IDEM does not anticipate any formal training requirements for people conducting the screening, but accessing locations and actual sampling of the outfalls should be done safely, and in a manner that minimizes exposure to outfall effluent.

*Comment:* In section 14(g), IDEM should provide an initial listing of all categories of regulated industrial facilities under 327 IAC 15-6 to the MS4 entity. Because municipalities do not want to become an inspection or enforcement arm of IDEM and expend resources in areas where they have no authority, this subsection should be deleted. (CEI, COE, CE, MCHD)

*Response:* Under the individual permit requirements of 40 CFR 122.26(d)(2)(ii), federal language requires MS4 entities to provide an inventory of industrial facilities, with associated standard industrial classification codes, which may discharge to an MS4 conveyance. IDEM believes this informational request should also be applied to general permits. As a tool in identifying potential problem sources or areas, this listing is also a component of the land usage assessment required under Part B of the SWQMP. IDEM does not expect an MS4 entity to take enforcement actions against an industrial source of pollutants to an MS4 conveyance without having the appropriate authority, but the identification and reporting of such facilities are important to the overall water quality improvement goal for the MS4 area.

*Comment:* In section 14(l), the language should be changed to read “...(10,000) shall satisfy

the MCM requirement...”. (CE)

*Response:* The rule language has been revised to reflect this suggestion.

*Comment:* In section 15, it appears that local governments will be delegated authority to issue permits for construction activities disturbing one acre or more of land under 327 IAC 15-5. If the cultural and natural resources review remains as part of the 327 IAC 15-5 requirements, projects could be delayed or halted, new environmental requirements could be imposed, and additional staffing burdens could be placed on limited state resources. Access to the applicable resource maps should be provided to local MS4 entities, but it would be preferred to delete the review requirement. (STDC, MCHD)

*Response:* To meet the requirements of section 15, a program, at a minimum, incorporating the requirements of 327 IAC 15-5 must be developed, implemented and enforced by a regulated MS4 entity. The cultural and natural resources review requirement in 327 IAC 15-5 was reevaluated, and has been deleted from rule language.

*Comment:* In section 15(b), the rule language needs to be strengthened to ensure that the appropriate authority is given to an MS4 operator to create and enforce the rule requirements. The requirements for construction site permit duration and construction plan development for individual lots that are part of a bigger development project are unclear. (ACI, WC)

*Response:* It is the responsibility of the MS4 entity to obtain the appropriate authorities, via an ordinance or similar mechanism, to implement and regulate a construction site run-off control program. Regulated MS4 entities must adopt requirements at least as stringent as 327 IAC 15-5. In 327 IAC 15-5-12, the permit duration is five (5) years. If a project’s duration is more than five (5) years, the permittee must reapply. In 327 IAC 15-5-2(d), an individual within a site permitted under this rule, where land disturbance is expected to be one (1) acre or more, must obtain their own permit and submit their own construction plan. Areas of land disturbance less than one (1) acre in a permitted site will be regulated under the original operator. However, the permitting authority, as referenced in 327 IAC 15-5-10(c), may enforce violations of the rule by identifying individuals responsible for the action.

*Comment:* In section 15(c), the language regarding soil and water conservation district involvement should be strengthened. The language should be changed to “...shall provide an opportunity to...”. (DNR)

*Response:* The rule language has been revised using the suggested language.

*Comment:* In section 15(e) and (f), it appears that IDEM needs to approve any projects in the MS4 area that disturbs one (1) or more acre of land prior to the land-disturbing activity. There is no stated amount of time given for this review. (COV)

*Response:* Because the intent of subsection (e) is only to compare notice of intent letter form submittals with the monthly construction site summary reports required by 327 IAC 15-18(b), subsection (f) has been deleted from rule language.

*Comment:* In section 15(g), tracking individual lot development for permit compliance, due to time lapses, is virtually impossible, and this process issue needs to be clarified and coordinated with local zoning codes. In subsection (6), the term “recorded” is unclear and should be defined. (WC, COE)

*Response:* Regulated MS4 entities must adopt requirements at least as stringent as 327 IAC 15-5. In 327 IAC 15-5-2(d), an individual within a site permitted under this rule, where land disturbance is expected to be one (1) acre or more, must obtain their own permit. Tracking individual lot development in regulated MS4 areas is the responsibility of the MS4 entity, but, to make this tracking easier, notification of remaining undeveloped lots should be provided, in the case of lots which are part of a larger development, by the overall development operator with the notice of termination letter. The undeveloped lot notification could be verified by a field inspection, and the resulting paperwork filed. When the lots are ready for development, a local permitting procedure, perhaps in conjunction with obtaining building permits, that includes a comparative review of the filed paperwork should require the submittal of construction permits and plans addressing storm water quality. The word “recorded” has been changed to “documented” in the rule.

*Comment:* In sections 15(h) and 16(d), annual training session attendance is required. Concerns were raised over sufficient local notification for state-approved training sessions, and the determination of appropriate training sessions that would meet the requirement. (VBC, WC)

*Response:* The Indiana department of natural resources, division of soil conservation, and IDEM will coordinate training of MS4 personnel for the construction site and post construction run-off control programs. The division of soil conservation will offer training sessions, and provide one-on-one training to MS4 entities. In addition, information concerning relevant courses offered both within, and outside, Indiana will be provided to regulated MS4 entities.

*Comment:* In section 15(j), the current language appears to give the MS4 operator an unintended choice for submittals of construction plans. There is also concern over adequate and timely review of the plans (that is, if the reviewing authority does not do its job), and the general need for an external entity reviewing the plans. The language should be changed to “...the local SWCD, department of natural resources, division of soil conservation, or other entity designated by the department.” There should be allowances in the rule language for emergency situations that are time-critical, such as collapsed piping or eroded levies. With the constant scrutiny of local contractors and the general public, it is unreasonable to assume that a regulated MS4 entity can not be trusted to review their own projects, and this subsection should be deleted. (DNR, HBC, COV, CE)

*Response:* The rule language was revised to reflect “other entities designated by the department.” The plans should be submitted to whichever entity is designated by IDEM. This submittal could be to the local county soil and water conservation district or the Indiana department of natural resources. IDEM, in consultation with Indiana department of natural resources staff, believes that the self-regulation of regulated MS4 entity construction projects is not appropriate until procedures have been established and consistently adhered to, and the associated rule language will remain.

*Comment:* In section 15(k), the current language could allow soil and water conservation districts and the Indiana department of natural resources to make authorization determinations independent of one another. The language should be changed to list only the department of natural resources, division of soil conservation, as the review authority. With the constant scrutiny of local contractors and the general public, it is unreasonable to assume that a regulated MS4 entity can not be trusted to review their own projects, and this subsection and related subsections should be deleted. (DNR, CE)

*Response:* The rule language has been revised to delete reference to the local soil and water conservation district in this subsection. IDEM, in consultation with Indiana department of natural resources staff, believes that the self-regulation of regulated MS4 entity construction projects is not appropriate until procedures have been established and consistently adhered to, and the associated rule language will remain.

*Comment:* In section 15(l), the type of projects referenced in this section appears to conflict with the definition for traffic phasing plan found in 327 IAC 15-5(78). As a case could be made for any project to alter vehicular traffic routes, this subsection needs more definition and clarification on intent and submittal requirements. (HBC, COV, CE)

*Response:* The intent of the traffic phasing plan is to address erosion and sedimentation concerns associated with rerouting traffic. For example, erosion and sediment control should be addressed for any temporary roads or bridges built to reroute traffic while construction takes place on the original structure. The definition in section 5(78) has been revised to read “...a written plan that addresses the installation of appropriate pollution prevention practices that is directly related to the land disturbance associated with infrastructure constructed to reroute vehicular traffic within an active construction zone.”

*Comment:* In section 15(m), the permitting and plan implementation requirements for the five (5) private areas associated with a construction project are unclear. (COV)

*Response:* For construction projects with one (1) acre or more of land disturbance area that are operated by either the MS4 operator or MS4 municipalities within the regulated MS4 area, the storm water pollution prevention plan submitted to the local soil and water conservation district or department of natural resources, division of soil conservation, for review must address the areas in

subsection (m). These off-site operational areas do not require additional NPDES storm water permits, but should be addressed in the construction plan developed for the associated construction site.

*Comment:* In section 16(b), the terms “sensitive areas,” “certain types of growth,” and “sound planning procedures” should be defined, and examples of “other regulatory means” should be provided. Because of the ambiguous terms, the requirement is very subjective and will be difficult to enforce. Restricting and guiding growth are sensitive legal and political issue, and more discussion on this section’s requirements is needed. Positive, economic development projects, like retaining wall “riverwalks,” may be impacted by the buffer strip, or similar best management practice, requirement. To make the requirements more flexible, the language should be revised to leave the items as options. The guidance document to accompany this rule should include an example of an ordinance that would meet the requirements of this subsection. (STDC, VBC, APC, IACT, CE)

*Response:* The requirements of this subsection relate to local planning efforts. The language has been revised to clarify the requirements.

*Comment:* In section 16(b), the reference to “327 IAC 15-5-7(8)” is incorrect, and should be changed to “327 IAC 15-5-6.5(b)(8)”. (DNR)

*Response:* The rule language has been corrected.

*Comment:* In section 16(c), the term “appropriate” should be clarified in subsections (4) and (5), in reference to filter strip width and installed practices at gasoline outlets and refueling areas. Filtering should be added to the listing of practices that an MS4 operator shall use. The phrase “where appropriate” should be added to the end of the first sentence. The term “minimum vegetated filter strip...” is unclear, and some targeted width should be stated. In terms of potential added filter strip cost and liability, clarification is needed on jurisdictional issues from private drains that are maintained by a regulated MS4 entity. Since there are instances where shoulders would be difficult to install and infiltration is not possible, the filter strip requirement, if left in the rule, should only apply to new roads under specific circumstances. In subsection (5), rule language is confusing, and language should be added to account for existing gasoline outlets and refueling areas that are upgrading their tank systems. In subsection (2), the reference requirements to meet Indiana ground water quality standards is too vague. To uniformly prescribe the specific practices listed in this section is unnecessary, and contradicts the federal intent to allow for “a significant degree of flexibility.” If the language remains, it should be revised to leave the items as options. (STDC, COV, HC, WC, CE, MCHD)

*Response:* This section, and the associated subsection requirements, apply to new development and redevelopment. The requirements listed in subsections (c)(1) through (5) are practices that IDEM feels are necessary to improve overall water quality. This subsection, as written, is highly flexible by allowing each MS4 entity to choose which storage, infiltration, or vegetative practices will be best

suited for local conditions. The restrictions in subsection (c)(1) through (5) only address specific locations for placement of practices and types of situations where specific controls are needed. As used in this subsection, the term “appropriate” is written to allow the regulated MS4 entity to have more implementation flexibility. The rule language has been revised to include the words “filtering” and “where appropriate” in the first sentence of this subsection, address the issue of requiring controls when tank systems are upgraded, and clarify references to Indiana ground water quality standards.

*Comment:* In section 16(d) and (e), requiring annual, approved training sessions and creating “safety” plans for all structural best management practices (for example, buffer strips) are unnecessary and burdensome (IACT).

*Response:* IDEM, in consultation with Indiana department of natural resources staff, believes that annual training sessions are needed. The intent of the training sessions is to inform appropriate regulated MS4 entity staff of the need to conduct periodic assessments of control structures to ensure proper long-term function and effectiveness, and to discuss the appropriateness of specific best management practices. Control technologies may change quickly, where previously used practices are no longer recommended. Annual training will allow MS4 entity staff to keep up with these changes. The requirement for safety plans for structural best management practices has been deleted from rule language.

*Comment:* In section 17(b), clarification of the rule language is needed. Municipalities have no authority to ensure that state or federal operations within the MS4 area are performed in ways that will reduce contamination of storm water discharges. (COE)

*Response:* Subsection (b) has been revised for clarity. The MS4 operator is only responsible for operations in which they have jurisdiction and authority.

*Comment:* In section 17(b)(1), the intent of the requirement for structure cleaning and street sweeping is unclear. If these items are mandatory, the necessary equipment purchases could be financial burdens. If these items are not mandatory, it is unclear who determines the appropriateness of the activities listed in clauses (A) through (F). Some of the activities listed in clauses (A) through (F) do not significantly improve water quality, and the intent and benefit of such requirements are unclear. If the items are not mandatory, the programmatic indicator in section 8(b)(32) referencing amount of material removed during maintenance operations should be deleted. (VBC, VCED, MCHD)

*Response:* Activities listed in clauses (A) through (F), including structure cleaning and street sweeping, are not mandatory, but, if these practices are already being conducted, the activities should be documented both in section 17 and the programmatic indicator data. As an example, IDEM will not require MS4 entities to purchase street sweepers or to sweep roads without curbs. However, IDEM does recommend the sharing of resources, like street sweepers, if possible, with neighboring MS4 entities. If an MS4 entity can document in Part C of the SWQMP their efforts to address, and, where



applicable, justification for not conducting, each of the maintenance activities, the appropriateness of the activities will be determined. All of the activities could potentially have a positive impact on water quality, by removing debris and solid materials before they enter waterbodies, preventing erosion and subsequent waterbody sedimentation, and improving aquatic habitat. Section 8(b) has been revised to clarify the issue of data collection when appropriate.

*Comment:* In section 17(b)(2), covering of sand storage piles is unnecessary, and the requirement should be deleted. Under clause (F), pesticide and canine park requirements should be placed in separate subsections. Since various types of equipment used for municipal operations may have the potential to contribute pollutants, a listing of the types of equipment should be provided to improve the overall operational assessment. (HBC, CEI, SDMC)

*Response:* Improperly stored sand piles (e.g. uncontained and adjacent to a waterbody) have the potential to increase the solids loadings to a waterbody from storm water run-off and should be addressed in the rule. Covering is not the only means of properly storing sand, and, for clarity, clause (A) has been revised. Clause (F) has been divided into two other clauses, (G) and (H) for clarity. IDEM does not plan to develop a listing of various types of equipment at operational areas that may contribute to polluted storm water run-off. This assessment of potentially polluting equipment is the responsibility of the MS4 entity responsible for the operational area, and will likely be different for every operational area.

*Comment:* In section 17(b)(3), the requirement to dispose of all removed solid wastes in accordance with 329 IAC 10 and 329 IAC 11 is burdensome, and should be deleted. (HBC, VBC)

*Response:* The intent of this rule requirement is to ensure that all collected solid waste materials are transported to appropriate facilities for proper disposal, and not to sample and analyze each solid waste material. IDEM is trying to avoid the dumping of collected materials directly on the ground as a disposal or reuse option. The reference to 329 IAC 10 and 11 was deleted, and the rule language was revised to reference prohibition of ground dumping.

*Comment:* In section 17(b)(4), IDEM appears to have a bias against flood management projects. There should not be a justification in writing every time a detention pond is constructed. (MCHD)

*Response:* Prior to storm water regulations, flood management projects typically addressed water quantity. The purpose of this rule requirement is to also address water quality for these projects. New flood management projects should be required to utilize practices, like detention basins, in the design process to improve water quality. Existing flood management projects should be assessed for possible retrofitting to include water quality improvement controls. This subsection refers to implementing appropriate policies and assessing existing projects. The justification for each practice,

like a detention pond, is not required.

*Comment:* In section 17(c), it can be implied that pesticide applications and salt and sand usage are currently excessive. It is unreasonable to require a reduction, when the current usage protocols are unknown. It is also unrealistic to require reductions, when there could be negative consequences related to public safety. (MCHD)

*Response:* Each MS4 entity has its own pesticide application and salt and sand usage practices. Prior to this rule, some of these MS4 entities probably never tracked these practices, and, based on data evaluation, there is the potential for reductions to occur. In other cases where these practices have been tracked, optimal usage has already been reached. The goals, including reduction percentages, must be addressed, but, depending on the situation, reductions may not be necessary. In these instances, the MS4 entity should address the goal by providing justification for not setting a reduction percentage.

#### Reporting and Future Permits

*Comment:* In section 18(a), annual reports must be submitted. This requirement exceeds the intent of federal requirements for annual report submittals after the first year, with subsequent submittals every three (3) to four (4) years. (WC)

*Response:* In 40 CFR 122.34(g)(3), federal language requires submittal of annual reports for the first permit term, and, for subsequent permit terms, submittal of reports in years two (2) and four (4). The rule language has been revised to reflect the federal requirement.

*Comment:* In section 18(b), limited local resources should be used on reviewing plans and inspecting sites, rather than on generating large amounts of paperwork for the State. Monthly construction site summary reports are burdensome, if not impossible. The recommendation is to submit either quarterly or semi-annual construction site summary reports. (VBC, WC, TOB)

*Response:* Based on expected work load requirements for review and comparison of the data, IDEM believes monthly submittals are the most effective frequency. Quarterly or semi-annual submittals would cause an unreasonable amount of paperwork to be delivered at the same time. The information required in the monthly submittals is something that should be tracked by the MS4 entity already in order to process construction site permit requests. IDEM will develop a form for these submittals, and, depending on the technology of the MS4 entity, electronic format submittals will be encouraged.

*Comment:* In section 19(e), the MS4 operator shall maintain and improve their minimum control measure implementation performance. It appears that no level of performance is sufficient, and that water quality resources are deemed more important than education, health care, employment or

crime reduction. (MCHD)

*Response:* The rule language has been revised to state “...maintain and, where possible, improve...” If water quality can be improved through additional cost-effective best management practices, the practices should be implemented.